



C.R.P.(MD).No.900 of 2019

-BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.900 of 2019

and

C.M.P(MD) No.5230 of 2019

1. Anwar Ali Khan
2. Jawahar Anwar Ali Khan

... Petitioners/Petitioners/Defendants 1 and 2

-vs-

1. Abubakar Sithick
2. Shaheera Mehaboob

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.02.2019 made in I.A.No.159 of 2017 in O.S.No.60 of 2012 on the file of the Additional District Munsif, Madurai.

For Petitioners : Mr.R.Gandhi
Senior counsel
for Mr.J.Karthikeyan

For Respondents : No appearance



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ORDER

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The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.02.2019 made in I.A.No.159 of 2017 in O.S.No.60 of 2012 on the file of the Additional District Munsif, Madurai.

2. The petitioners herein are the petitioners/defendants 1 and 2, and the respondents herein are the respondents/plaintiffs before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The short facts which give rise to the instant Civil Revision Petition are that, the respondents/plaintiffs have filed the suit in O.S.No.60 of 2012 for the relief of declaration to declare that the Adoption Deed dated 18.11.2002 is null and void as it was a result of the fabrication and impersonation. It appears that during the pendency of the said suit and after cross-examination of P.W.1, the petitioners/defendants have filed an application to send for the disputed Adoption deed dated 18.11.2002 to the handwriting expert to



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compare the Adoption Deed along with the admitted thumb impression of the respondents/plaintiffs. The said application was dismissed by the Court below with the finding that there was a criminal case pending and that the respondents can prove their case by producing documentary evidence. Aggrieved with the order, the defendants have come before this Court in the present Civil Revision Petition.

5. Despite the names of the respondents are printed in the cause list, no one appeared before this Court on behalf of them.

6. The learned Senior Counsel appearing on behalf of the petitioners/defendants 1 and 2 would contend that during the cross examination of the plaintiffs, he has denied the execution of the settlement deed, therefore if the settlement deed is sent for a handwriting expert to compare with the admitted signature of the plaintiffs, the entire issue could be sorted out without any oral evidence, and he would further submit that the finding of the Court below about the pendency of the criminal case and about the proof of the matter by producing the documentary evidence, is based upon misconceptions.



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7. This Court has given it's anxious consideration to the submission of the learned Senior Counsel for the petitioners.

8. The sum and substance of the instant Civil Revision Petition is, whether the document which is challenged by the petitioners herein could be sent for the comparison of thumb impression before the handwriting expert or not. In this regard, the Court below has rejected the application on the ground that the said application has been moved belatedly, and that too, during the cross examination of the P.W.1. However, on perusal of the deposition of P.W. 1, it is seen that P.W.1, even while showing the document, denied the execution of the said document and stated that the disputed document is fabricated one and result of the impersonation. Only at that stage, the petitioners had come with the instant application.

9. The fact and issue is only in respect of the execution of the Adoption Deed. When the party to the document is denying the thumb impression found in the adoption deed, though the same can be proved by examining the attestors and the scribes, nothing wrong in sending the document for comparison of thumb impression along with the admitted thumb impression



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of the respondents herein. However, the Court below on the finding of that pendency of the criminal case in respect of the impersonation, ultimately, dismissed the application.

10. In this regard, the learned Senior Counsel invited the attention of this Court to the order passed by this Court in CrI.O.P.(MD)No.17087 of 2016, and would submit that the criminal case, which the Court below referred to in the order, has already been quashed, on 15.03.2017. Therefore, upon the subsequent quash of the criminal case and upon the own merits, as dismissed herein above, this Court is of the view that the order passed by the Court below is liable to be interfered with.

11. In the result, this Civil Revision Petition is **allowed** as a result I.A.No.159 of 2017 is allowed as prayed for. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

23.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Munsif,
Madurai.



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C.KUMARAPPAN,J.

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